

**AGREEMENT**  
**BETWEEN**  
**THE DEPARTMENT OF THE NAVY**  
**AND**  
**THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, D.C.**

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**TRANSFER OF NAVAL BOATS,  
SUPPORT CRAFT AND INDUSTRIAL EQUIPMENT  
WITH POLYCHLORINATED BIPHENYLS  
TO COMMUNITIES FOR FURTHER USE**

**AGREEMENT BETWEEN THE DEPARTMENT OF THE NAVY AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
TRANSFER OF NAVAL BOATS, SUPPORT CRAFT, AND INDUSTRIAL EQUIPMENT  
WITH POLYCHLORINATED BIPHENYLS TO COMMUNITIES FOR FURTHER USE**

**PARTIES**

1. The United States Environmental Protection Agency ("EPA") and the Department of the Navy ("the Navy") are parties to this Agreement.

**PURPOSE**

2. This Agreement is intended to specify the manner in which the Navy may proceed with certain activities the Navy has identified as vital to the economic reuse of base closure installations and associated industrial equipment and vessels while EPA finalizes its proposed PCB management and disposal regulations. Based on currently available information, EPA believes the activity authorized by this Agreement is not likely to pose an unreasonable risk of injury to health or the environment. This Agreement does not eliminate legal requirements that may be applicable to the actions covered by the Agreement.

**COVERED MATTERS**

3. This Agreement establishes the conditions under which the Navy and EPA have agreed the Navy may transfer boats, support craft or industrial equipment that possibly contain polychlorinated biphenyls (PCBs) to local redevelopment authorities (LRAs) and local communities (LCs) for reuse. This Agreement is intended to be an interim agreement to allow the Navy to transfer such property until EPA's promulgation of a final rule on PCB management and disposal that includes provisions applicable to these actions.

4. This Agreement applies to the transfer and use of Naval vessels and industrial equipment that may contain unauthorized non-liquid PCBs in the following uses: (1) shipboard PCB-impregnated felt material, applications of which include, but are not limited to, gaskets in the joints of ventilation ducts, faying or insulating material between dissimilar metals on all ships, and machinery mount insulation; and (2) other PCB uses, including uses as plasticizers or flame retardants in insulation, dried paints, adhesives, rubber mounts, non-metallic components of electrical wire cable systems, and other PCB uses discovered during the term of this Agreement. If, during the term of this Agreement, the Navy discovers any additional significant use of PCBs, defined as more than 3 pounds of PCB on any boat, support craft or piece of industrial equipment, it shall inform the Director, Federal Facilities Enforcement Office (2261 A), U. S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, who will determine, in consultation with the Navy, the extent, if any, to which the terms of the Agreement cover the newly discovered use. This Agreement does not address liquid PCB uses such as transformers, capacitors, or fluorescent light ballasts, which are regulated at 40 CFR 761.

5. This Agreement does not affect the terms and conditions in any other Letters of Enforcement

Discretion or Compliance Agreements that have been issued or executed by EPA unless they are specifically superseded by this Agreement. The Letters of Enforcement Discretion issued on August 27, 1996, to facilitate the transfer of Navy Crane barges at the Charleston Navy Shipyard are superseded by this Agreement so that all Base Closure Redevelopment Authority transfers can be conducted in accordance with the same conditions.

### DEFINITIONS

6. The following definitions apply to this Agreement:

a. "EPA's final rule on PCB management and disposal" means the final rule that is the outgrowth of the rule proposed by EPA on December 6, 1994, 59 FR 62788.

b. "Boats," when used in reference to vessel transfers at base closure sites, means self-propelled water-borne craft, with less than a 500 ton light load displacement, capable of limited independent operation in coastal and protected waters. This includes standard Navy-design or commercial off-the-shelf small boats and other undesignated vessels, including the following: rigid, inflatable boats (RIBs); personnel, utility, harbor security and work boats; barges; and gigs.

c. "Support craft," when used in reference to vessel transfers at base closure sites, means self-propelled and non-self-propelled vessels, with less than a 500 ton light load displacement, designed to operate in coastal and protected waters and provide general support to combatant forces and shore establishments. Support craft includes tugs, tankers, lighters, barges, and other craft.

d. "Industrial Equipment," when used in the context of this Agreement, means (1) floating dry docks, which are docks with walls and a floor, from which the water may be pumped out, and capable of being moved from one location to another, generally used for ship repair and construction, and (2) other pieces of heavy equipment used in manufacturing, processing, finishing, repairing, lifting or moving shipyard and industrial items or manufactured products.

e. "Vessel," when used in the context of this Agreement, means both boats and support craft as defined above.

f. "Local Redevelopment Authority" or LRA means any entity (including an entity established by a State or local government) responsible for development of a redevelopment plan with respect to a former military installation and for directing implementation of that plan. A redevelopment plan provides for reuse or redevelopment of a closing or realigning installation's real property and/or personal property.

g. "Local community" or LC, as used in this Agreement, refers to local government departments, agencies, and instrumentalities as well as local commissions or Native American corporations who, for purposes of reuse or redevelopment, need access to vessels and industrial equipment from installations affected by base closure and realignment.

g. "Third Party Transferees," as used in this Agreement, refers to the following entities: individuals, corporations, companies, associations, firms, partnerships, societies, joint stock companies, and Federal, state and local government departments, agencies and instrumentalities to which items covered by this Agreement are transferred by LRAs or LCs in furtherance of economic reuse of base closure installations and associated industrial equipment and vessels.

### STATEMENT OF FACTS

7. The Navy has provided the following information:

a. In 1989, the Navy discovered that wool felt used as acoustical damping material on submarines and as gasket material on all vessels may contain viscous PCBs by weight at concentrations of 50 to 300,000 ppm. The felt material was procured from 1948 to the late 1970s under specifications that required a fire retardant and was used during both new construction and repair of vessels. The Navy promptly notified EPA of its discovery and removed the material from the Navy Supply System. Subsequent investigations by the Navy since 1990 have determined that solid PCBs are also present in some commercial industrial and shipboard items, such as paint, rubber mounts, rubber and plastic cable insulation, and tape, used on vessels. The cable insulation is specifically designed to be corrosion resistant for use in a salt air/salt water environment. These additional items have also been removed from the Navy Supply System. The Navy no longer uses either the felt or other PCB items in the repair or construction of new vessels or industrial equipment.

b. Many items that may contain PCBs are in locations accessible only by dismantling the vessel's structure or moving equipment or machinery, which gives rise to safety and environmental risks. Often, such items are integral to the continuing function of the vessel as a vessel or to maintaining the watertight and structural integrity of the vessel. The reuse of industrial equipment is similarly dependent on not removing those materials containing non-liquid PCBs.

c. Since the Navy's discovery of PCBs on its vessels in 1989, it has had difficulty in transferring vessels and industrial equipment for economic reuse by communities at base closure sites.

8. The domestic distribution in commerce and continued use of the items identified above which contain PCBs at quantifiable levels would be violative of current PCB regulations at 40 CFR 761, promulgated pursuant to the Toxic Substances Control Act (15 U.S.C. Sections 2601-2692). However, EPA's proposed amendments to the PCB regulations (59 FR 62788, December 6, 1994) would authorize the distribution in commerce and continued use of such PCB items identified above, intact and in place in their existing application, when certain use conditions are met.

## REQUIREMENTS AND DELIVERABLES

9. The terms and conditions set forth in this Agreement are enforceable by the parties to it. This Agreement creates no private right of enforcement.

10. The Navy shall not transfer any vessels or equipment that may contain PCBs for economic reuse unless such actions are carried out in accordance with the requirements of this Agreement and all applicable permits administered by EPA.

11. Transfers of Vessels and Industrial Equipment at Base Closure Sites.

a. The Navy may donate, sell, lease, or otherwise transfer boats and support craft and industrial equipment to local redevelopment authorities (LRAs) or local communities (LCs) for their use in the economic development of their communities.

b. LRAs or LCs may use, or further donate, sell, lease, or otherwise transfer these vessels or equipment to third parties as defined in this Agreement, for further use.

c. The Navy shall advise the LRA or LC that the vessels or industrial equipment offered for transfer may contain PCBs, but shall not be required to test any equipment or any location on a vessel for regulated PCBs. Upon request by the LRA or LC, the Navy shall allow the LRA or LC to conduct any non-destructive tests for PCBs on any vessels or equipment proposed for transfer.

d. The LRA or LC shall advise any potential third party vessel transferee that the vessels or industrial equipment offered for transfer may contain PCBs, but shall not be required to test any equipment or any vessel location for regulated PCBs. Upon request by the potential third party transferee, the LRA or LC shall allow that party to conduct any non-destructive tests for PCBs on the vessels or equipment proposed for transfer.

e. The Navy's transfer agreement shall require the LRA or LC to make available to any potentially exposed employee or any other potentially exposed individual engaged in repair, remedial, removal or disposal activities, information required under the Occupational Safety and Health Administration (OSHA) Hazard Communication Program at 29 CFR 1910.1200(h) before disturbing any PCB material. The Navy's transfer agreement shall require the LRA or LC to comply with all OSHA standards for PCBs and hazard communication and to post a copy of Appendix A at a site accessible to any potentially exposed individual. The LRAs or LCs shall require the same of any third parties to whom vessels or industrial equipment covered by this Agreement are transferred.

f. LRAs, LCs, and third parties receiving the vessels and equipment shall maintain, intact and in place in their existing application, the PCBs described in Paragraph 4, unless normal maintenance requires their removal. If removal is necessary, the PCB materials at concentrations of 50 ppm or greater shall be disposed of in accordance with the PCB regulations at 40 CFR 761. LRAs, LCs, and third parties may at any time encapsulate the areas suspected of containing the



non-liquid PCBs. Encapsulation may be achieved by painting over the suspect areas.

g. Upon expiration of the useful life of the vessels and industrial equipment, or their removal from active service, the LRA, third party or whoever holds title to the vessels or equipment shall dispose of them in accordance with the PCB regulations at 40 CFR 761.

h. All Navy vessels and industrial equipment transferred to LRAs or LCs under the authority of this Agreement shall be transferred through a Navy/LRA(LC) agreement that incorporates the requirements and deliverables of this Agreement. A copy of the executed Navy LRA/LC agreement shall be mailed or faxed to the appropriate regional PCB contact listed in Attachment I within 14 calendar days after the effective date of the transfer.

i. All Navy vessels and industrial equipment transferred to third parties from LRAs or LCs under the authority of this Agreement shall be transferred through a LRA (or LC)/third party agreement which incorporates the requirements and deliverables of this Agreement. A copy of the executed LRA (or LC)/third party agreement shall be mailed or faxed to the appropriate regional PCB contact listed in Attachment I within 14 calendar days after the effective date of the transfer.

j. Any agreement transferring vessels or industrial equipment covered by this agreement from an LRA or LC to a third party shall provide, subject to any legal restrictions applicable to the LRA/LC, that the LRA or LC must reclaim the transferred vessels or equipment if the third party is violating any terms or conditions of this Agreement. If the LRA is unable to reclaim the transferred vessels or equipment, the Navy shall take back the vessels or equipment subject to the availability of funds; however, nothing in this Agreement shall require the Navy or the LRA/LC to violate the Anti-Deficiency Act or any similar provision of state or local law. In the event funding is not available for this purpose, the Navy agrees to seek sufficient funding through the Department of the Navy budgetary process to fulfill its obligations under this Agreement.

#### BREACH

12. If the requirements of this Agreement are breached by the Navy or any subsequent transferee, this Agreement is void as to that party and EPA reserves the right to bring an enforcement action.

#### TERMINATION

13. This Agreement shall terminate upon the effective date of a new rule addressing PCB management and disposal based on the proposed rule published in the Federal Register on December 6, 1994. EPA may terminate this Agreement at any time, upon cause, in writing from the EPA signatory to the Agreement, or his successor, to the Navy signatory to the Agreement or his successor. All transfers of vessels and industrial equipment occurring after the effective date of the new rule are not made under the authority of this Agreement.

#### OTHER PROVISIONS

14. The adoption of any substantive procedures, standards, or statements for purposes of this

Agreement shall not constitute a precedent for the contents of EPA's final rule on PCB management and disposal.

EFFECTIVE DATE

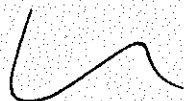
15. This Agreement shall become effective upon execution by authorized representatives of EPA and the Navy. The Navy shall sign and date this Agreement followed by EPA. This Agreement is final and effective on the date EPA signs after the Navy affixes its signature to the Agreement.

THE PARTIES SO AGREE:



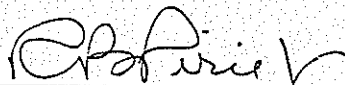
The Honorable Steven A. Herman  
Assistant Administrator for Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency

Date: 8/4/94



The Honorable Steven S. Honigman  
General Counsel of the Navy  
Department of the Navy

Date: 7/29/97



The Honorable Robert B. Pirie, Jr.  
Assistant Secretary of the Navy (Installations and Environment)  
Department of the Navy

Date: 8/4/97

## APPENDIX A

### PCB FACT SHEET DEVELOPED AS PART OF AN EPA/NAVY AGREEMENT TO PERMIT THE DOMESTIC DISTRIBUTION AND CONTINUED USE OF NAVAL VESSELS AND INDUSTRIAL EQUIPMENT WITH PCBs

Polychlorinated biphenyls (PCBs) have been used, in a liquid form, in the dielectric fluid of electrical transformers, capacitors, oil-filled cable, and fluorescent light ballasts, and in hydraulic systems. PCBs were also added as plasticizers and fire retardants to a variety of commercial-type products.

The Navy has found that the following items on some ships and industrial equipment constructed before 1979 may contain PCBs in regulated concentrations:

- Cable cover & insulation
- Rubber gaskets
- Adhesives
- Felt gaskets
- Thermal insulation material
  - Fiberglass
  - Felt
  - Foam
  - Cork
- Transformers
- Capacitors
- Electronic equipment w/ capacitors and transformers
- Tapes
- Oil in
  - Electrical equipment and motors
  - Anchor windlasses
  - Hydraulic systems
- Surfaces contaminated with historic oil spills
- Oil-based paint

The items listed above could be found anywhere on a naval or commercial vessel and similar items may be found on industrial equipment. Such items are generally not marked.

These items should be maintained intact and in place in their existing locations, unless removal is essential to work being undertaken. If such items are removed, they must be handled, stored, and disposed of as regulated PCB items in accordance with the requirements of Part 761 of title 40, Code of Federal Regulations unless tested and found not to contain regulated PCBs.

PCBs are a toxic environmental contaminant. For information on health effects and toxicity, please call the Environmental Protection Agency's TSCA Assistance Information Service at (202) 554-1404.



## Attachment I - Regional PCB Contacts

### Region 1

USEPA - Region 1  
John F. Kennedy Federal Building  
Boston, MA 02203-0001

Kim Tisa- 617-565-3257  
fax - 617-565-4940

### Region 2

USEPA - Region 2  
290 Broadway  
New York, NY 10007-1866

Dave Greenlaw- 908-906-6817  
fax - 908-321-6788

### Region 3

USEPA - Region 3  
841 Chestnut Building  
Philadelphia, PA 19107

Ed Cohen -215-566-2147  
fax - 215-566-2134

### Region 4

USEPA - Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Stuart Perry - 404-562-8980  
fax - 404-562-8972

### Region 5

USEPA - Region 5  
77 West Jackson Boulevard  
Chicago, IL 60604-3507

Tony Martig - 312-353-2291  
fax - 312-353-4342

### Region 6

USEPA - Region 6  
Fountain Place, 12th Floor, Suite 1200  
1445 Ross Avenue  
Dallas, TX 75202-2733

Lou Roberts - 214-665-7579  
fax - 214- 665-7446

### Region 7

USEPA - Region 7  
726 Minnesota Avenue  
Kansas City, KS 66101

Dave Phillippi - 913-551-7395  
fax - 913- 551-7065

### Region 8

USEPA Region 8  
999 18th Street, Suite 500  
Denver, CO 80202-2466

Dan Bench - 303-312-6027  
fax - 303-312-6044

Region 9

USEPA Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Yosh Tokiwa - 415- 744-1118  
fax - 415-744-1073

Region 10

USEPA Region 10  
1200 Sixth Avenue  
Seattle, WA 98101

Dan Duncan - 206-553-6693  
fax - 206-553-8509